Supreme Court, U.S.
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No. 94-1801

In The

Supreme Court of the United States

October Term, 1994

GROUND IMPROVEMENT TECHNIQUES, INC., ROBERT E. KINGHORN, TED L. HOEY, and CHARLIE THOMAS,

Petitioners,

v.

COLUMBIA COUNTY, FLORIDA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether individual employees, shareholders or officers of a corporation have standing to constitutionally challenge local government bid procedures when the bid at issue was submitted by the corporation, not the employees, shareholders and officers thereof.

II. Whether a locally-applied bid preference policy, adopted only for county contracts, can withstand constitutional scrutiny under various clauses of the Fourteenth Amendment and the Commerce Clause of the United States Constitution.

III. Whether a corporation organized under the laws of the State of Florida has standing to raise a claim under the Privileges and Immunities Clauses of Article IV, Section 2 and the Fourteenth Amendment of the United States Constitution.

LIST OF PARTIES

Petitioners are Ground Improvement Techniques, Inc., a Florida corporation; Ted L. Hoey, an officer and shareholder of Ground Improvement Techniques, Inc.; Robert E. Kinghorn, an officer and shareholder of Ground Improvement Techniques, Inc.; and Charlie Thomas, an employee of Ground Improvement Techniques, Inc. Ground Improvement Techniques, Inc. has no parent companies and no subsidiaries. The Respondent is Columbia County, Florida, a political subdivision of the State of Florida.

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OPINIONS BELOW

On October 18, 1993, the United States District Court for the Middle District of Florida granted Respondent's Motion to Dismiss, or in the Alternative, for Summary Judgment. The Order of the District Court dismissed the individual Petitioners' constitutional claims against Columbia County and granted summary judgment in favor of Columbia County on the corporate Petitioner's constitutional claims. On January 30, 1995, the United States Court of Appeals for the Eleventh Circuit affirmed, per curiam, the District Court's Order, without an opinion. Neither of these decisions is published, but the orders are reproduced in the Appendix to the Petition for Writ of Certiorari (hereinafter "Pet. App.") filed by Ground Improvement Techniques, Inc., Robert E. Kinghorn, Ted L. Hoey and Charlie Thomas. (Pet. App. 1-16).

STATEMENT OF JURISDICTION

The Respondent hereby adopts the Statement of Jurisdiction contained within the Petition for Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to those constitutional and statutory provisions cited by the Petitioners, Respondent submits the following to this Court:

Columbia County Resolution 87R-21 (reproduced in Respondent's Appendix as "Appendix A");

Columbia County's Instructions to Bidders (excerpts reproduced in Respondent's Appendix as "Appendix B").

STATEMENT OF THE CASE

On February 15, 1991, Columbia County ("the County"), a political subdivision of the State of Florida, solicited bids to award a construction contract for the County's solid waste landfill. (Pet. App. 12). The Instructions to Bidders outlined the criteria governing the County's bid procedure and contract award. (Pet. App. 12). These criteria included:

> The basis of award of the Contract, if let, will be the lowest responsible Bidder. *However*, in keeping with the County's policy of considering other contributing factors (Resolution No. 87R-21) such as prior history with the County and residence and place of business of Contractor, subcontractor, and suppliers, *the County reserves the right to award the Contract to other than the lowest Bidder at the County's discretion.*

(Appendix B-1) (emphasis added).

Columbia County Resolution 87R-21, referenced in the Instructions to Bidders, articulated the factors, in addition to the dollar amount of the bid, which the County could consider in awarding the contract. (Pet. App. 11). Specifically, Resolution 87R-21 stated:

> The general policy of the Board [of the County Commissioners of Columbia County] is to

> award the purchase or contract to the lowest bidder; *however, other contributing factors may justify awarding to a higher or more responsible bidder.* Other contributing factors include, but are not limited to, . . . prior history with the County including favorable contracts, commodities or services, and residence and place of business of contractor, subcontractor, and suppliers.

(Appendix A-1) (emphasis added).

In 1988, the County adopted Resolution 88R-16, which amended Resolution 87R-21. Resolution 88R-16 was identical to the previous resolution except for the addition of two sentences, "The bid of a resident of Columbia County, Florida shall have a 5% preference over the bids submitted by any non-resident of Columbia County, Florida. A resident shall mean [definitions provided]." (Pet. App. 17). The Instructions to Bidders issued for the County's landfill construction contract inadvertently omitted a specific reference to County Resolution 88R-16 and only Resolution 87R-21 was referenced in the Instructions to Bidders. (Pet. App. 12).

On April 4, 1991, the County awarded the landfill construction contract to the second lowest bidder whose bid was only 1.8% higher than the bid from Ground Improvement Techniques, Inc., the lowest bidder. (Pet. App. 11). The second lowest bidder, to which the County awarded the contract, was a contractor located in Columbia County which had performed several successful and favorable contracts with the County in the past. Whereas, Ground Improvement Techniques, Inc., although a Florida corporation, was not a local company and had never performed any prior contracts for the County.

In September 1991, Ground Improvement Techniques, Inc. filed suit in the United States District Court for the Middle District of Florida against the County under 42 U.S.C. § 1983, naming Ground Improvement Techniques, Inc., a Florida corporation ("corporate Petitioner"), and three officers, shareholders, and employees of the corporate Petitioner ("individual Petitioners") as Plaintiffs. After the District Court granted a motion to dismiss, the Petitioners filed an Amended Complaint in May 1992 alleging 13 counts of constitutional claims against the County's bid procedures. (Pet. App. 2-3). These allegations included, with respect to the individual Petitioners, violations of the Privileges and Immunities Clauses under both Article IV, Section 2 and the Fourteenth Amendment, and claims under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. (Pet. App. 6). The Amended Complaint also alleged violations of both Privileges and Immunities Clauses, the Equal Protection and Due Process Clauses of the Fourteenth Amendment, and the Commerce Clause, with respect to the corporate Petitioner. (Pet. App. 10, 14).

The County filed a Motion to Dismiss Amended Complaint, or in the Alternative for Summary Judgment. (Pet. App. 2). On October 18, 1993, the District Court entered an order dismissing the claims of the individual Petitioners due to a lack of Article III standing and granting the County's motion for summary judgment with respect to the claims of the corporate Petitioner on their merits. (Pet. App. 16). The Petitioners appealed to the United States Court of Appeals for the Eleventh Circuit,

which affirmed the District Court's order, per curiam, without an opinion. (Pet. App. 1).

SUMMARY OF THE ARGUMENT

The corporate Petitioner has no standing to challenge the County's resolutions and bid procedures under the Privileges and Immunities Clauses of the United States Constitution. Historically, corporate entities lack standing under these clauses because they are not "citizens" entitled to their protections. This general rule of law has been consistently applied throughout the American courts for over 100 years. In addition, the individual Petitioners cannot maintain standing to assert their constitutional challenges in this case. They have suffered no direct, actual injury sufficient to meet the "case or controversy" requirement of Article III of the United States Constitution. The only harm, if any, suffered by the individual Petitioners is derived from an alleged injury to the corporate Petitioner. Such a derived injury cannot support constitutional standing.

Furthermore, the Petitioners have failed to raise a substantial question of law concerning the validity of the County's bid procedures in this case. The cases cited by the Petitioners as support for this "conflict" simply do not present legal questions which are similar enough to each other to create a conflict. In fact, the cases cited by the Petitioners reveal that the courts are consistently

applying the same constitutional standards to the issues as presented by their cases.

REASONS FOR DENYING THE WRIT

I. THE COURTS BELOW CORRECTLY RULED THAT THE INDIVIDUAL PETITIONERS AS EMPLOYEES, SHAREHOLDERS, AND OFFICERS DO NOT HAVE STANDING.

The Petitioners fail to raise a substantial question of law or conflict among the American courts on the issue of whether individual shareholders or officers of a corporation have standing for alleged constitutional violations when the Article III injury-in-fact accrues to the business entity, not the individuals who compose that entity. In the instant case, the District Court stated quite clearly, "While . . . individuals, no doubt, . . . operate, manage and invest in the entity, the corporation has a *separate* existence, and holds itself out to the world as a *singular* creature." (Pet. App. 8, n.2) (emphasis in original). Furthermore, the District Court noted, "When the corporation succeeds or is harmed, the consequences are visited on these individuals [employees, shareholders, officers] only *indirectly*." (Pet. App. 8, n.2) (emphasis in original).

To maintain standing under Article III, claimants must demonstrate that a direct, real or immediate injury resulted from the government's conduct, that a nexus exists between the government's official conduct and the injury, and that the injury can be redressed by the requested relief. *Warth v. Seldin*, 422 U.S. 490 (1975); *Valley Forge Christian College v. Americans United for Separation of*

Church and State, Inc., 454 U.S. 464 (1982); *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983); *Whitmore v. Arkansas*, 495 U.S. 149 (1990). In the instant case, the individual Petitioners cannot meet these requirements because they have suffered no direct or actual injury by the County's denial of the corporate Petitioner's bid. Any harm suffered by the individual Petitioners is derived from the alleged injury to the corporate Petitioner as a business entity; such a derived injury is insufficient for Article III standing. *Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel*, 20 F.3d 1311, 1317 (4th Cir. 1994) ("If . . . [shareholder and officer] had submitted bids as an individual, or if [contractor] were not incorporated, [shareholder and officer] would have standing to assert this [constitutional] claim. But the bids here were the corporation's, and so is the injury."); *Erlich v. Glasner*, 418 F.2d 226 (9th Cir. 1969) (shareholder, as an individual, could not maintain an action under the Civil Rights Act for damages suffered by the corporation); *Sterngass v. Bowman*, 563 F. Supp. 456 (S.D.N.Y.), *aff'd*, 742 F.2d 1440 (2d Cir. 1983), *cert. denied*, 469 U.S. 823 (1984) (shareholders lacked standing to assert civil rights claims when the gravamen of their complaint described injuries to the corporation); *Marty's Adult World of New Britain, Inc. v. Guida*, 453 F. Supp. 810 (D. Conn. 1978) (shareholders who argued loss of anticipated salaries lacked standing because damages were to their corporation).

The Petitioners, however, assert that the courts below ignored assistance provided by this Court's holding and discussion in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville*, 508

U.S. ___, 113 S. Ct. 2297 (1993). In *Northeastern*, the plaintiff was a contracting association which challenged a city ordinance requiring that 10% of the annual amount spent on city contracts be for "Minority Business Enterprises." This Court determined that the association need not show that one of its corporate members would have received a city contract, but for the ordinance, to demonstrate injury-in-fact for Article III standing.

Although the *Northeastern* case clarified portions of the associational standing exception, *see Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), it provides no benefit to the claims of the individual Petitioners in this case. The individual Petitioners fail to recognize that the members of the association determined to have standing in *Northeastern* were the entities which would have bid for city contracts and would have suffered an injury from the city ordinance, not the individual employees, shareholders or officers of those entities.

II. THE ESTABLISHED CRITERIA FOR EVALUATING EACH CONSTITUTIONAL CHALLENGE RAISED BY THE PETITIONERS WAS CORRECTLY APPLIED BY THE COURTS BELOW.

The Petitioners assert that this Court has incompletely addressed the validity of local bid preferences in public contracting and that this "void" has created "a growing line of conflicting federal and state court decisions that involve the constitutionality of local preference resolutions." (Petition, 5). However, the cases which the Petitioners cite as conflicting and exemplifying the need

for this Court's clarification address differing issues and public contracting policies.

For example, the Petitioners assert that the cases of *Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel*, 20 F.3d 1311 (4th Cir. 1994), and *W.C.M. Window Co., Inc. v. Bernardi*, 730 F.2d 486 (7th Cir. 1984), conflict with one another and exemplify the uncertainty created by this Court's inability to substantively address the Privileges and Immunities challenge in *City of Camden*, 465 U.S. 208 (1984), due to an incomplete record.

No such conflict or uncertainty exists. In *Smith Setzer & Sons, Inc.*, 20 F.3d 1311 (4th Cir. 1994), a North Carolina corporation and the president and shareholder of the corporation, raised challenges to the State of South Carolina's bid preference for South Carolina vendors and products under the Privileges and Immunities Clauses, Commerce Clause, and Equal Protection Clause. The court rejected the Privileges and Immunities challenge because of its inapplicability to corporations and the lack of standing for the corporation's shareholder. *Id.* at 1318. The Commerce Clause challenge was also rejected as the court concluded that the State of South Carolina was acting under the market participant exception to the Commerce Clause. *Id.* at 1320. Finally, the court held that under the rational basis scrutiny of the Equal Protection Clause, the bid preferences at issue did not infringe upon the protections of the Fourteenth Amendment. *Id.*

The court in *Smith Setzer & Sons, Inc.* recognized that the case of *W.C.M. Window Co., Inc. v. Bernardi*, 730 F.2d 486 (7th Cir. 1984), invalidated a state-wide residential bid preference under the Commerce Clause; however,

these two cases present different factual situations, permitting rational differences in the application of the market participant exception to the Commerce Clause. In fact, the court in *W.C.M. Window* used the same analysis for the market participant exception as was applied in *Smith Setzer & Sons, Inc.* and reached the same conclusion on standing under the Privileges and Immunities Clauses as the court in *Smith Setzer & Sons, Inc.* Finally, although the court in *W.C.M. Window* chose to discuss the merits of the claim under the Privileges and Immunities Clauses (in part because of the case's procedural posture), the court's substantive analysis used the same criteria as described in *United Building and Construction Trades Council of Camden County v. City of Camden*, 465 U.S. 208 (1984).

In addition, no conflict exists among any of the additional cases which the Petitioners cite for a conflict. Concededly, all the cases cited by the Petitioners involve some form of a public contract bidding requirement which, to varying degrees, benefit one segment of society and place burdens on another. But, otherwise any similarity among the cases is imaginary. The cases of *Rayco Construction Co., Inc. v. Vorsanger*, 397 F. Supp. 1105 (E.D. Ark. 1975), and *E & E Construction Co. v. Illinois*, 674 F. Supp. 269 (N.D. Ill. 1987), do not, as the Petitioners assert, conflict with *Associated General Contractors of California, Inc. v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987), and *J.F. Shea Co., Inc. v. City of Chicago*, 992 F.2d 745 (7th Cir. 1993).

For example, the residential bid preference at issue in *Rayco Construction Co.*, 397 F. Supp. 1105 (E.D. Ark. 1975),

was exceedingly broad as it applied to all public contracts, over $10,000, with the State of Arkansas, its agencies and political subdivisions. The court concluded that this preference was invalid under an equal protection and due process analysis, but the court refused to address the challenges raised on the basis of the Commerce Clause. Furthermore, no conflict is raised by the decision in *E & E Construction Co.*, 674 F. Supp. 269 (N.D. Ill. 1987). In that case, the court did not address the merits of any of the alleged constitutional claims alleged. Rather, the court merely concluded that a cause of action was stated for each claim, thus, defeating the defendant's motion to dismiss. Although, the court in *E & E Construction Co.*, did recognize the inability of a corporation to maintain standing under the Privileges and Immunities Clauses.

In contrast, the official government conduct under attack in *Associated General Contractors of California*, 813 F.2d 944 (9th Cir. 1987), did not even relate to residential bid preferences. The bid policies upheld in *Associated General Contractors of California* were ones providing preferences based on minority and gender status under affirmative action plans of the local governments. Additionally, in *J.F. Shea Co., Inc. v. City of Chicago*, 992 F.2d 745 (7th Cir. 1993), the court upheld a local bid preference under the market participant exception to the Commerce Clause and concluded that an individual employee of the plaintiff corporation had no standing under the Privileges and Immunities Clauses.

Clearly no conflict exists between these two groups of cases. Not one of these cases addresses the same constitutional issue, in the same procedural posture, and under the same factual constraints as another. With so

many differences among these cases, no conflict could possibly exist.

Finally, the Petitioners assert that the case of *Galesburg Construction Company, Inc. v. Memorial Hospital of Converse County*, 641 P.2d 745 (Wyo. 1982), in which the court upheld a state-wide residential bid preference under equal protection and due process challenges, conflicts with *Big D Construction Corp. v. Court of Appeals for the State of Arizona, Division One*, 789 P.2d 1061 (Ariz. 1990), in which the court struck a state-wide residential bid preference under an equal protection challenge. At first blush, the Petitioners appear to finally have found a conflict. However, a closer examination of these cases reveals that no such conflict exists.

For example, in *Big D Construction Corporation*, 789 P.2d 1061 (Ariz. 1990), the court distinguished the *Big D Construction* bid preference scheme and the typical residential bid preference policies otherwise upheld under equal protection scrutiny. The court also included a specific distinction between the Arizona statute and the statute at issue in *Galesburg Construction Company*. 789 P.2d at 1070-71. The court explained that in *Big D Construction*, the Arizona statute provided a 5% preference to "resident contractors paying *taxes on a plant* within the state, or the equivalent thereof, for two years immediately prior to the awarding of the contract." 789 P.2d at 1064 (emphasis in original). Whereas, in *Galesburg Construction Company*, 641 P.2d 745 (Wyo. 1982), the Wyoming statute at issue granted a 5% preference to residential contractors over non-residential contractors.

The court in *Big D Construction* distinguished these two statutory schemes by stating that at least in *Galesburg Construction Company*, the bid preference rationally related to the purposes of employing state residents and supporting the state economy; however, the tax-based preference of *Big D Construction* actually discouraged these same stated purposes. The court noted, "All of the cases that uphold preference statutes do so on bases no longer reflected in Arizona's statutes - residency, in-state presence, in-state employment, payment of a relevant amount of taxes, and the like." 789 P.2d at 1071.

The Petitioners are simply mistaken that this Court's treatment of *United Building and Construction Trades Council of Camden County v. City of Camden*, 465 U.S. 208 (1984), has created conflicts among the circuit courts of appeal, district courts, or state courts of last resort. If anything, the cases cited by the Petitioners for their argument reveal the consistency of American courts, at all jurisdictional levels, in applying the same standards to the legal challenges and factual situations presented. The differences in ultimate results in the cases cited by the Petitioners are explained, not by legal standards inconsistently applied, but by the different factual scenarios presented and the different legal challenges mounted by the different plaintiff combinations.

III. THE COURTS BELOW CORRECTLY RULED THAT THE CORPORATE PETITIONER COULD NOT MAINTAIN STANDING UNDER THE PRIVILEGES AND IMMUNITIES CLAUSES.

The question of whether an incorporated business entity, like Ground Improvements Techniques, Inc., has

standing to challenge government action under the Privileges and Immunities Clause was decided by this Court over 100 years ago. *Paul v. Virginia*, 75 U.S. 168 (1868). The Privileges and Immunities Clause of Article IV, Section 2 states, "The Citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." The same clause of the Fourteenth Amendment proclaims, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States[.]"

This Court interpreted the word "citizens" to apply "only to natural persons, members of the body politic, owing allegiance to the State, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed." *Paul v. Virginia*, 75 U.S. at 177. This interpretation of both Privileges and Immunities Clauses has been consistently applied by this Court and among the circuit courts of appeals. *See, e.g., Western & Southern Life Ins. Co. v. California Bd. of Equalization*, 451 U.S. 648 (1981); *Smith Setzer & Sons, Inc. v. South Carolina Procurement Review Panel*, 20 F.3d 1311 (4th Cir. 1994); *W.C.M. Window Co., Inc. v. Bernardi*, 730 F.2d 486 (7th Cir. 1984).

The policies against expanding the protection of the Privileges and Immunities Clauses to incorporated business entities are clearly articulated and consistently followed throughout the American courts at all jurisdictional levels. For example, in *Paul v. Virginia*, 75 U.S. 168 (1868), this Court recognized that "a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting

them . . . from individual liability." *Id.* at 181. These policies remain in force and effect as exemplified by the United States Court of Appeals for the Fourth Circuit in *Smith Setzer v. South Carolina Procurement Review Panel*, 20 F.3d 1311 (4th Cir. 1994). There, the court stated, "In deciding to conduct business through a corporate form, the shareholders of a corporation limit their exposure to direct personal liability. . . . " *Id.* at 1317. Thus, "[a] corporation is treated, for Privileges and Immunities Clause purposes among others, as a separate entity." *Id.*

The Petitioners assert that the language relied upon by many courts in *Paul v. Virginia*, 75 U.S. 168 (1868), for the proposition that the respective Privileges and Immunities Clauses do not protect corporate entities is mere dicta. Thus, according to the Petitioners, a "doctrinal void" exists on the issue of corporate standing under the Privileges and Immunities Clauses and the void "has left modern corporate employees without the same constitutional privileges and immunities protections or civil rights afforded all other workers in modern society." (Petition, 7). The County obviously disagrees that the language in *Paul v. Virginia* is mere dicta, and asserts that the Petitioners forget that all the corporate Petitioner's constitutional claims, except the one based on the Privileges and Immunities Clauses, were addressed, on their merits, by the courts below. Clearly, then, the civil rights of the corporate Petitioner have been protected despite *Paul v. Virginia*.

CONCLUSION

The Petitioners fail to present any conflict between the circuit courts of appeal, the district courts, or the state courts of last resort on the issues in this case. The Petitioners also fail to present any substantial question of law in need of clarification by this Court. Thus, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

RESOLUTION NO. 87-R21

RESOLUTION AMENDING THE COLUMBIA COUNTY PURCHASING MANUAL BY AMENDING SUBSECTION 6 OF SECTION V ENTITLED "AWARDING BIDS".

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF COLUMBIA COUNTY, FLORIDA that Subsection 6 of Section V, of the Columbia County Purchasing Manual entitled "Awarding Bids" be, and the same is hereby amended to read as follows:

SECTION V

6. Awarding Bids

The general policy of the Board is to award the purchase or contract to the lowest bidder; however, other contributing factors may justify awarding to a higher *or* more responsible bidder. Other contributing factors include, but are not limited to: life-cycle or total cost bidding; exceeding minimum specifications at a relatively minor cost which would better benefit the County; prior history with the County including favorable contracts, commodities, or services, *and residence and place of business of contractor, subcontractors, and suppliers.* With these and other contributing factors to Board of County Commissioners reserves the right to award a bid which will be in the best interest of the County.

Passed and adopted this 16th day of July, 1987.

(OFFICIAL SEAL)

ATTEST:

/s/ Mary B. Childs
Mary B. Childs
Clerk of
Circuit Court

Board of County
Commissioners
of Columbia County,
Florida

by: /s/ James Montgomery
James Montgomery
Chairman

APPENDIX B

7.0 AWARD OF CONTRACT AND EXECUTION OF AGREEMENT

7.1 The basis of award of the Contract, if let, will be the lowest responsible Bidder. However, in keeping with the County's policy of considering other contributing factors (Resolution No. 87R-21) such as prior history with the County and residence and place of business of Contractor, subcontractor, and suppliers, the County reserves the right to award the Contract to other than the lowest Bidder at the County's discretion. The Owner shall make such investigations as deemed necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, the Bidder fails to satisfy the Owner of the Bidder's ability to perform the work.

7.2 The Owner shall have the right to waive any informalities or minor irregularities, to accept any Bid or to reject any and all Bids, as in the Owner's judgment, best serves the Owner's interest.

7.3 The Owner shall issue the Notice of Award in the form provided in the Contract Documents. The successful Bidder shall, within 10 calendar days of receipt of the Notice of Award, furnish the Owner with the following:

A. Five executed duplicate originals of the Agreement in the form in the Contract Documents.

B. Five executed duplicate originals of the Performance Bond and five executed duplicate

originals of the Payment Bond, all in the forms provided in the Contract Documents. The Performance Bond and the Payment Bond shall each be payable to the Owner in the amount of 100 percent of the Contract Price, and shall be furnished by the Surety which previously agreed by the notarized letter submitted with the Bid to furnish said Bonds. If the Performance Bond and/or the Payment Bond are signed by an attorney-in-fact, the attorney-in-fact shall submit with the Bond(s) an original, certified and effected dated copy of his power of attorney.

C. Five duplicate originals of the Certificate(s) of Insurance satisfactory to the Owner indicating compliance with the requirements of the Contract Specifications.

7.4 Should the successful Bidder fail to furnish the executed Agreement, Performance Bond, Payment Bond, and/or Certificate(s) of Insurance within the specified period, the Owner may declare the Bidder to be in default, and the Bidder's Bid Bond shall become the property of the Owner.

7.5 Within 15 calendar days of receipt of a satisfactory Agreement, Performance Bond, Payment Bond, and Certificate(s) of Insurance from the successful Bidder, the Owner shall execute the duplicate originals of the Agreement. Should the Owner fail to execute the Agreement within the specified period, the Bidder may, by Written Notice, withdraw the Agreement without further liability on the part of either the Owner or the Contractor.

7.6 The Owner and the Engineer shall schedule the preconstruction conference. The Notice to Proceed, in the

form provided in the Contract Documents, and the Contractor's copy of the complete set of executed Contract Documents shall be issued at the preconstruction conference. If for any reason the Owner is unable to issue the Notice to Proceed at the preconstruction conference, the time may be extended by mutual agreement between the Owner and the Contractor, or the Contractor may, by Written Notice, terminate the Agreement without further liability on the part of the Owner or the Contractor.

7.7 Within 15 days of commencement of the work, the Contractor shall submit a construction schedule as directed in the Special Conditions.

END OF SECTION